

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MINH BA LUC,

Petitioner,

vs.

MICHAEL CHERTOFF, et al.,

Respondent.

CASE NO. 08-cv-0743-DMS (WMc)

**ORDER GRANTING
APPOINTMENT OF COUNSEL
AND REQUIRING RESPONSE TO
PETITION**

Petitioner has filed a petition for writ of habeas corpus pursuant to Section 2241, along with a motion to appoint counsel. 28 U.S.C. Section 2241 permits a district court to appoint counsel in a habeas proceeding under that section when “the interests of justice so require,” if a petitioner has shown he is unable to afford an attorney. 18 U.S.C. § 3006A(a)(2)(B). To make this decision, a court must evaluate “the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

Petitioner’s ten month detention as a removable alien extends beyond the six month period the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), determined to be “presumptively reasonable.” If Petitioner can provide “good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future,” the Government bears the burden of rebutting that showing. *Id.* If the Government cannot meet this burden, federal officials are required to release petitioner.

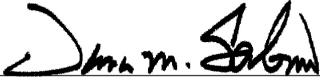
1 Petitioner claims he can demonstrate that for seven months, ICE has been unable to obtain
2 permission from Vietnam for Petitioner's repatriation, which appears to diminish the likelihood of his
3 removal in the foreseeable future. In light of the length of his detention and the circumstances outlined
4 in his motion, Petitioner has demonstrated a likelihood of succeeding on the merits in a complex area
5 of law sufficient to support appointment of counsel. Furthermore, Petitioner's financial records
6 demonstrate he is unable to afford an attorney. Accordingly, the Court appoints Federal Defenders
7 (James Fife) to represent Petitioner.

8 Respondents are ordered to show cause why the Petition should not be granted by filing a
9 written return no later than June 9, 2008. Any reply shall be filed no later than June 23, 2008, at which
10 time the matter will be taken under submission without oral argument.

11 **IT IS SO ORDERED.**

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13 DATED: May 12, 2008

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15 HON. DANA M. SABRAW
16 United States District Judge

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